

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the CORPORATE SECURITIES LAW OF 1968 relating to the temporary transfer of agents of broker-dealers, changes to the broker-dealer application, performance based compensation, and books and records requirements.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

Notice is also given that any interested person may present statements or arguments relevant to the proposed action by a written communication addressed to, and received by, the Department's contact person on or before 5 p.m., March 31, 2000. If this day is a Saturday, Sunday or state holiday, the comment period will close at 5 p.m. on the next business day.

INFORMATIVE DIGEST

The Corporate Securities Law of 1968 ("CSL") requires any broker-dealer who conducts business in this state to obtain a certificate from the Commissioner, unless that broker-dealer is exempt from the licensing requirements.

Section 260.210 sets forth the procedures for broker-dealers licensed pursuant to Section 25211 of the Corporations Code. The Commissioner proposes to amend Section 260.210(b)(1) to link the review of an agent's disciplinary history by the Department under the Corporate Securities Law of 1968 ("CSL") with the command instructions of the Central Registration Depository ("CRD") system. The Commissioner also proposes to adopt new subparagraph (b)(2) of Section 260.210 to allow the temporary transfer of the CRD registration of an agent from one broker-dealer to another through the Relicensing program ("Relicensing program") of the North American Securities Administrators Association ("NASAA").

Section 260.211 sets forth the procedures for applying for a certificate as a broker-dealer. Subsection (a) requires the applicant use the Uniform Application for Broker-Dealer Registration (Form BD), and subsection (b) sets forth the Instructions for California.

The Commissioner proposes to amend subsection (b) to clarify, update or eliminate various requirements contained in subsection (b) of Section 260.211 (Instructions for California).

Part II. Instructions as to Arrest Records. The California Business and Professions Code Section 461 prohibits public agencies from requesting, on an initial application, that an applicant reveal a record of arrest that did not result in a conviction or plea of nolo contendere. In order to comply with Business and Professions Code Section 461, first-time broker-dealer applicants are instructed to amend specific questions contained in Uniform Application for Broker-Dealer

Registration (Form BD) regarding arrest records. Currently, the question number and the manner in which the question is to be modified are set forth in this instruction.

In February 1998, the National Association of Securities Dealers, Regulation ("NASDR") revised Form BD to, among other things, renumber and revise the questions regarding arrest records (Items 7F and 7G). In August 1999, as part of the rollout of Web CRD, Form BD was again amended and Items 7F and 7G were renumbered Items 11H(2) and 11G. The Commissioner is proposing to amend this instruction to direct first-time applicants to a special instruction sheet. The special instruction sheet will provide specific information on the questions in Form BD to be modified in accordance with Business and Professions Code Section 461. The special instruction sheet will also contain other information to assist an applicant in completing the Form BD. The special instruction sheet is available from any of the Department's offices and through the Department's internet home page.

Part III. Additional Information. Item 2 - Organization Information. This item is being amended to require broker-dealers who file as limited liability companies ("LLC"), to include organizational document specific to LLCs.

Part III. Item 3. Other Exhibits. The requirement in Item 3, that the applicant provide the name of its worker's compensation insurance or attach a copy of the certificate of consent to self-insure in Item (B) of Other Exhibits is being deleted.

Part IV. Investment Adviser Activities. The Commissioner proposes to amend this item to clarify that the exemption in Section 25205 of the Corporations Code is not applicable to a broker-dealer registered with the Securities and Exchange Commission as an investment adviser. These broker-dealers should make a notice filing as required by Section 25230.1(b). Part IV is also being amended to require a broker-dealer who relies upon the exemption provided by Section 25205 to attach a copy of the Form ADV and a list of all investment adviser representatives or associated persons and the applicable reporting fee. Part IV is further amended and to provide that an individual's social security number will not be disclosed when the Department complies with a request under the Public Records Act.

Section 260.211.1 sets forth the procedures and application for licensing by notification for broker-dealers who are exempt from licensing by Corporations Code Section 25211(b). The Commissioner proposes making similar changes as those proposed for Section 260.211, Part IV., to Section 260.211.1. Subsection (a) and subsection (b), Item 9 of the application by notification, are being amended to require a broker-dealer, who engages in business as an investment adviser in this state, but is not licensed as an investment adviser, to submit with the application by notification, a complete copy of the Form ADV and a list of investment adviser representatives or associated persons and the applicable reporting fee.

The Commissioner proposes additional amendments to the application for licensing by notification contained in subsection (b). Item 6.b. which requires a broker-dealer to attach certain copies of the Form BD is being deleted. Item 6.b.C. which requires that a completed Customer Authorization of Disclosure of Financial Records be attached, has moved and renumbered Item 6.b. And, the disclosure regarding social security numbers is being amended to clarify that social security account numbers would not become part of public records.

Section 260.234 provides an exception from the prohibition on an investment adviser's compensation based on capital appreciation of clients' assets. This section is being amended to conform to recent changes adopted by the Securities and Exchange Commissioner to Rule 205-3 which became effective in August 1998.

Section 260.241 sets forth the books and records to be maintained by a broker-dealer. Subsection (a) is being amended to clarify that the Commissioner or the Commissioner's designee has access to and may make copies of any of the books and records maintained by the broker-dealer. References to the Pacific Stock Exchange are being changed to Pacific Exchange.

AUTHORITY

Sections 25211(a) and (b), 25241, 25234 and 25610, Corporations Code.

REFERENCE

Sections 25205, 25210, 25211, 25230, 25231, 25231.1, 25234, 25241 and 25608(p), Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department of Corporations adopts the regulations. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS

The express terms of the proposed action may be obtained upon request from any office of the Department of Corporations. Request Document OP 10/98-B. A statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 10/98-C. As required by the Administrative Procedure Act, the Office of Policy maintains a rulemaking file containing all the information upon which the proposal is based. The rulemaking file is available for public inspection at the Department of Corporations, Office of Policy, 980 Ninth Street, Suite 500. Sacramento, California.

ALTERNATIVES CONSIDERED

The Department of Corporations must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the above action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to the State: None.
- Direct or indirect costs or savings to the state or in federal funding: None.
- Cost to Local Agencies and School Districts required to be reimbursed under Part 7

(commencing with Section 17500) of Division 4 of the Government Code: None.

- No other nondiscretionary cost or savings are imposed on local agencies.
- Costs to Private Persons or Businesses: Insignificant or none.
- Effect on Housing Costs: None.

DETERMINATIONS

The Commissioner has determined that the proposed regulatory action:

- Does not affect small businesses. Broker-dealers are not considered a small business under Government Code Section 11342(h)(2).
- Does not impose a mandate on local agencies or school districts, or a mandate which requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

CONTACT

Comments or inquiries concerning these proposed regulation changes may be directed to WILLIAM KENEFICK, Acting Commissioner. Department of Corporations. 980 Ninth Street, Suite 500. Sacramento, California 95814. (916) 322-3553.

Dated: January 13, 1999
Sacramento, California

WILLIAM KENEFICK
Acting Commissioner